FRONT LINE Report

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Bills signed, others on Governor's desk

With the end of the 2007 legislative session, several bills impacting law enforcement have been signed into law or are on the Governor's desk.

HB 41 (SIGNED INTO LAW)

HB 41 deals with multijurisdictional enforcement groups. The bill's provisions relating to MEGs contain an emergency clause and are now law. Under HB 41, MEGs may investigate Internet-based crimes, as well as traditional crimes (195.503); and Department of Public Safety grants to MEGs may include monies for necessary equipment and supplies (650.120). The bill also contains other changes impacting Highway Patrol background checks and the St. Louis Board of Police Commissioners.

SB 270 (SIGNED INTO LAW)

SB 270, which takes effect Aug. 28, expands membership on the POST Commission to 11 and specifies that two new members will be municipal officers with a rank below sergeant.

GO TO WEB FOR BILL STATUS

To check on a bill's status, go to www.senate.mo.gov for Senate bills and www.house.mo.gov for House bills.

LEGISLATIVE UPDATE

HB 583

HB 583 is awaiting action by the Governor as of press time. It deals with orders of protection and crime victims, particularly victims of rape and other sex offenses. The bill:

- Ensures uniformity in gathering forensic evidence in rape or sexual assault cases and ensures that the victim may not be charged for the cost of collecting such evidence (191.225).
- Allows certain offenders who show that they were victims of domestic violence to seek early release through the Board of Probation and Parole (217.692).
- Requires confidentiality by employees of a rape crisis center (455.003).
- Enhances the crime of first-degree domestic assault to a Class A felony when the perpetrator has been previously convicted of that crime (565.072).

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Police chase resulting in injury did not violate Constitution

Scott v. Harris
No. 05-1631
April 30, 2007

In an 8-1 decision, the U.S. Supreme Court ruled that a police officer did not violate the constitutional right of a fleeing motorist who was severely injured when the officer intentionally rammed the suspect's car, causing it to slide down an embankment and overturn.

In *Scott v. Harris*, the justices gave great weight to the patrol car's video of the pursuit. The video showed Victor Harris driving recklessly in a way that the court thought endangered the lives of other drivers.

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Police officers may accompany suspect into home after arrest

U.S. v. Varner
No. 06-2862
April 4, 2007

In *U.S. v. Varner*, the 8th U.S. Circuit Court of Appeals held that it was reasonable for police officers to follow or accompany an arrested suspect into his home, even if he did not explicitly give them permission to do so.

This case provides excellent guidance to officers about the scope of control that can be exercised over a suspect under arrest.

Two officers arrived at Matthew Varner's home with a warrant for his arrest for failure to pay child support. When the officers

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BILLS SIGNED, OTHERS ON GOVERNOR'S DESK: CONTINUED FROM PAGE 1

- Prohibits law enforcement agencies from requiring a rape victim to submit to a polygraph to pursue an investigation (566.224).
- Allows greater confidentiality for the identity of rape or other sexual assault or domestic violence victims (566.266 — court records; 589.660 — 589.681 — home and work address records).
- Gives notice to petitioners for ex-parte orders of protection when an order is served on the respondent once a statewide notification system is established (455.038).
- Makes various changes to the Crime Victims law in Chapter 595.

SBs 62/41 (SIGNED INTO LAW)

Signed by the Governor and taking effect Aug. 28 is SBs 62/41, which addresses self-defense. The bill will:

- Allow a person to use physical force against another who is "attempting to commit, committing or escaping after the commission of a forcible felony" (563.031).
- Allow a person to use deadly force against someone who has unlawfully entered that person's home or car, and specifies that the person using force does not have to retreat from the home or vehicle.
- Establish that a person who uses justified force has an absolute defense from criminal prosecution or civil liability (563.074).
- Allow "qualified retired law enforcement officers" to carry concealed firearms with proper identification (571.030).
- Tie the crime of transfer of a concealable firearm to federal law (571.080).
- Allow for the sale of certain confiscated firearms with proceeds going to the local agency (571.095).
- Allow certain officers to waive the training to qualify for a conceal carry permit (571.111).
- Provide that mental health records may be accessed by the Highway Patrol for reporting to the National Instant Criminal Background Check System (630.140.5).
- Eliminate the requirement for a person to obtain a right to purchase permit from the county sheriff (571.090).

POLICE CHASE RESULTING IN INJURY DID NOT VIOLATE CONSTITUTION: CONTINUED FROM PAGE 1

The officer first tried to stop Harris for speeding. After a 10-mile pursuit that lasted six minutes, the officer applied his push bumper to Harris' car, causing him to lose control. As a result, he was rendered a quadriplegic.

The court's decision does not mean that officers may ram the car of a fleeing suspect, regardless of the initial violation. The ramming of the vehicle under these conditions was considered the use of deadly force. Thus, the use of this deadly force was permissible only if the suspect had committed a crime involving death or serious physical injury; or the officer is defending himself against a threat of death or serious physical injury; or the suspect poses an immediate threat if not stopped immediately.

After reviewing the videotape, the court concluded that Harris' driving "posed an actual and imminent threat to the lives of any pedestrians who might have been present, to other civilian motorists, and to the officers involved in the chase."

Another significant point made by the court was that police officers need not "assume" that a suspect will cease his dangerous evasive driving if the police end the pursuit. The court ruled the "police need not have taken that chance and hoped for the best."

Very often in pursuit cases that result in litigation, an argument is made that had the police ended the pursuit, the suspect would slow down and become a safe driver. The Supreme Court has now said what many in law enforcement have long understood: that is not necessarily a reasonable assumption.

The court concluded that a "police officer's attempt to terminate a dangerous high-speed car chase that threatens the lives of innocent bystanders does not violate the Fourth Amendment, even if it places the fleeing motorist at risk of serious injury or death."

This decision does not alter the right of individuals to sue in state court for injuries arising from pursuits. One of the greatest protections from such lawsuits is for officers to activate **both** lights **and** sirens while pursuing.

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Police officers may accompany suspect into home after arrest

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knocked on his door, Varner exited his home and was arrested. Varner asked if he could go inside to tell his girlfriend that he was leaving. The officers agreed, and followed him.

Once inside, the officers saw – in plain view – meth paraphernalia. The officers then asked for permission to search the home, which Varner refused to give. He then asked to go to the basement to retrieve his cigarettes. When the officers told him he could not go to the basement alone, Varner declined to get the cigarettes. Instead, he asked if his girlfriend could retrieve the cigarettes.

The officers told Varner his girlfriend could retrieve the cigarettes, but only if accompanied by an officer. The officer promised he would not "search" the basement. When the officer accompanied the girlfriend into the basement, the officer saw – in plain view – marijuana, a pipe, a clear bag of white powder and ammunition. Since Varner was a convicted felon, it was illegal for him to possess the ammunition.

The evidence was all lawfully discovered and admissible at trial.

Ordinarily, the arrest of a suspect outside his home does not justify a warrantless search of the home. It is, however, proper for the officer to accompany a suspect into the home when the suspect desires to do so.

It was not necessary for the officers to explain to Varner that they would accompany him into the house; an arrested suspect should realize that he will not be allowed to move around unattended. Monitoring movements of an arrested person is reasonable.

In addition, the evidence seized in the basement was in plain view, and the officer was legitimately present in the basement based on Varner's consent.

The officer did not exceed the scope of the consent given – seeing items in plain view is not the equivalent of "searching" the basement, which the officer agreed he would not do.

... But police need warrant to enter home to arrest

McClish v. Nugent
No. 06-11826
April 11, 2007

In *McClish v. Nugent*, decided by the 11th Circuit Court of Appeals, the court reminds police officers that to enter a home to make an arrest, the officers must have a warrant.

In 1980, the U.S. Supreme Court ruled in *Peyton v. New York*, 455 U.S. 573 (1980) that "the Fourth Amendment has drawn a firm line at the entrance of the house. Absent exigent circumstances, that threshold may not reasonably be crossed without a warrant."

Florida deputies received a call indicating that Douglas McClish and his neighbor were involved in a dispute. Based on prior complaints, the deputies believed they had probable cause to arrest McClish for aggravated stalking of the neighbors.

They went to McClish's home and knocked. When he opened the door, the deputy reached across the threshold and pulled him onto the porch and arrested him.

There was no exigency or emergency and the officers admitted they had time to get a warrant. After the criminal charges were dismissed, McClish filed a federal civil rights suit against the officers.

The court held that this home entry, by reaching across the threshold to pull McClish out, was illegal and unconstitutional. Had the officers obtained either an arrest warrant or a search warrant, the officer's conduct would have been permitted.

It was not the arrest itself that was illegal – it was the entry.

The courts have consistently upheld "the centuries-old principle of respect for the privacy of the home, it is beyond dispute that the home is entitled to special protection as the center of the private lives of our people. We have, after all, lived our whole national history with an understanding of the ancient adage that 'a man's home is his castle.'" *Georgia v. Randolph*, 547 U.S. 103 (2006).

For this reason, courts have stated that officers may not cross the threshold, regardless of whether the door is open or closed, "by ever a fraction of an inch."

Two other points should be emphasized:

- This is not a case where a suspect is outside and then runs into the home when police approach. It would have been permissible for the deputy to ask McClish to step outside and, if he did, arrest him. But, had McClish refused to step outside, the officers still could not have gone in.

- The warrant requirement would have been satisfied by an arrest warrant. The Supreme Court ruled in *Peyton* that police armed with an arrest warrant may enter the suspect's home if they have probable cause to believe he is home when they enter. If the deputies had an arrest warrant, their conduct would have been legal. But without a warrant, as long as McClish stood inside the threshold of his door, the police could not enter.

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Suspicious answers at traffic stop allow detention

U.S. v. Lyons
No. 06-3292
May 16, 2007

In the April 2007 issue of Front Line, police officers were advised that during a routine traffic stop they may ask the driver any questions, even questions unrelated to the traffic stop, as long as the questioning does not extend the lawful period of detention for that stop.

In a recent case decided by the 8th Circuit Court of Appeals, the court reaffirmed that any suspicious answer to those questions may allow the officer to detain the individual longer if those answers create reasonable suspicion that the individual may be involved in other illegal activity.

In *U.S. v. Lyons*, a Nebraska trooper stopped Kelvin Lyons for speeding on Interstate 80. Lyons presented a rental agreement showing the van had been rented three days earlier in Phoenix. There were several large suitcases in the van.

Lyons said he and his passenger had flown to Phoenix, but decided to drive back home to Ohio. When the trooper noted the rental agreement stated the van was to be delivered to Chicago, Lyons then said they would stop in Chicago, visit the passenger's cousin, and rent a different car to drive home to Ohio.

The trooper gave Lyons a warning citation for speeding and then asked "Can you just wait here a minute while I go talk to [your passenger]?" Lyons said "sure."

The passenger said they had been in Tucson and that they were going to drop the van off in Chicago and fly home to Ohio.

Based on these inconsistencies, the trooper believed she had reasonable suspicion to detain the two men to investigate whether they were involved in drug activity.

The trooper called for a K-9 officer. The dog arrived 31 minutes later and alerted to the interior of the van where over 106 pounds of marijuana were found.

The 8th Circuit held that as an officer trained in highway drug interdiction, the trooper had reasonable suspicion to detain the van and occupants based on the inconsistent answers. The 31-minute delay in the drug dog's arrival also was not unreasonable because the dog was 30 minutes away when called.

Finally, at one point the dog stuck his head into an open van window while searching the van's exterior. This inadvertent act by the dog did not make the search illegal. The handler did not prompt the dog to do this and, therefore, the entry into the van was legal.

ID Theft Hotline
800-392-8222

Nixon has set up a hotline to help Missourians recognize and report identity theft. He also now has a complaint form online at **ago.mo.gov** for victims to report theft.